IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPLICATION NO.1 OF 2002

Mr.S.M.Masurekar (Administrator of D.S.Kothari Hospital) a Charitable Organisation duly registered under provisions of Bombay Public Trust Act, 1950 having its office at Kamle Kutir, Opp.Kasturba Chowk, C.P.Tank, Mumbai - 400 004. ..Applicant.

V/s.

1. Union of India through the Joint Secretary, Ministry of Law, Justice and Company Affairs, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai - 400 020.

2. The Commissioner of Customs having his office at Air Cargo Complex Sahar, Andheri (E), Mumbai 400 099.

3. The Customs Excise and Gold Control Appellate Tribunal having its office at 3rd Floor, P.N.B. House, Sir P.M.Road, Fort, Mumbai - 400 001. ..Respondents.

Mr.Rafique Dada, Senior counsel with Jitendra Jain and Varun Mamniya i/b. Shah & Sanghavi for applicant.

Mr.A.J.Rana, Senior Counsel for respondents.

CORAM : DR. S.RADHAKRISHNAN AND J.P.DEVADHAR, JJ.

DATED : 18TH JANUARY, 2007.

ORAL JUDGMENT (PER DR.S.RADHAKRISHNAN, J.)

Heard learned Senior Counsel for the applicant and the respondents. We have perused the matter. This application was admitted on 24/4/2002 on

the following substantial questions of law:-

1) Whether on the facts and in the circumstances of the case the Deputy Commissioner was required in law to state the reason for the imposition of penalty of Rs.1,00,000/- since the maximum penalty prescribed was five times the duty involved or Rs.1,000/- whichever is more ?

2) Whether on the facts and in the circumstances of the penalty of Rs.1,00,000/- was justified when no reason for imposition of the same had been set out in the order of the Deputy Commissioner and there was no findings that there was Mens rea on the part of the applicant ?

3) Whether the penalty of Rs.1,00,000/- imposed by the Deputy Commissioner and confirmed by the Tribunal was justified on the ground that the notification granting exemption did not allow the imposition of fine and penalty proportionate to the percentage of free treatment of indoor and outdoor patients ?

2. The main dispute in this case is that the order passed by the Tribunal is discriminatory and no reasons are given for imposing such a huge penalty. The questions raised are substantial questions of law and require consideration.

3. Accordingly, the application is allowed. The Tribunal is directed to send the statement of the case as expeditiously as posible. The application stands disposed of accordingly.

(DR.S.RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)